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REPORT

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PUBLIC EMPLOYEE RETIREMENT

ADMINISTRATION COMMISSION

relative to

THE EARLY INTERVENTION PROGRAM

FOR INJURED PUBLIC EMPLOYEES

AND EDUCATIONAL PROGRAMS

FOR SAFETY IN THE WORKPLACE.

(under Section 14 of Chapter 427 of the
Acts of 1996 and amended by Section 9 of
Chapter 17 of the Acts of 1997)

September, 1997.



THE COMMONWEALTH OF MASSACHUSETTS

PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

JOHN W. MCCORMACK BUILDING, ROOM 1101

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EXECUTIVE DIRECTOR

ROBERT F. STALNAKER

September 23, 1997

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Honorable Robert E. MacQueen, Clerk
Commonwealth of Massachusetts
House of Representatives
State House - Rm. 145
Boston, MA. 02133

Dear Mr. MacQueen:

In accordance with the provisions of Chapter 17 of the Acts of 1997 I am pleased to file the enclosed report of the study and evaluation conducted by the Public Employee Retirement Administration Commission relative to the implementation of the Early Intervention Program established pursuant to G.L. c. 32, §5B. I would like to commend the Early Intervention Task Force for its diligence in completing its task in the relatively short time allotted by the statute.

Pursuant to the mandate contained in Section 9 of chapter 17 of the acts of 1997, the Public Employee Retirement Administration Commission conducted a study to evaluate the Early Intervention Program established by G.L. c. 32, §5B. The Commission created the Early Intervention Task Force made up of representatives of the Massachusetts Municipal Association, the Massachusetts Association of Contributory Retirement Boards, the State Board of Retirement and the Teachers' Retirement Board to assist it and make recommendations with regard to the implementation of the statute. In addition to the representatives from the aforementioned entities, the Task Force included the Worcester County Treasurer and representatives of the Professional Firefighters of Massachusetts, the Massachusetts Police Association. Also in attendance at each Task Force meeting were staff members from the Joint Committee on Public Service.

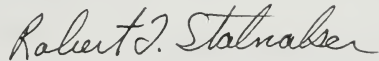
Enclosed for filing with the House and Senate Ways and Means Committees and the Joint Committee on Public Service is the Report of the Early Intervention Task Force. Each participant in the Task Force concurred in the recommendations to the Commission. The

Report has been reviewed by the Public Employee Retirement Administration Commission and each Commissioner supports the recommendations contained therein, including the recommendations for legislation that the Task Force deemed necessary for the appropriate implementation of the statute.

I hope this information is helpful to members of the Legislature as they consider the implementation of Chapter 306 and Chapter 427 of the Acts of 1996.

I am available at your convenience should you have questions or if I can be of assistance, please contact me at 727-9380.

Sincerely,



Robert F. Stalnaker
Executive Director

MEMORANDUM RELATIVE TO THE EARLY INTERVENTION PROGRAM FOR INJURED PUBLIC EMPLOYEES AND EDUCATIONAL PROGRAMS FOR SAFETY IN THE WORKPLACE.

September 8, 1997.

To the Public Employee Retirement Administration Commission:

Chapter 306 of the Acts of 1996 amended G.L. c. 32, adding a new section, G.L. c. 32, §5B. This section created a requirement that each retirement board establish an early intervention program to be approved by the Public Employee Retirement Administration Commission (PERAC).

The early intervention plans required by G.L. c. 32, §5B were to be established by retirement boards no later than March 15, 1997 consistent with guidelines to be established by PERAC no later than February 1, 1997. The retirement boards submitted early intervention plans to PERAC which were required to include projections of implementation costs to be borne by each retirement system. PERAC was required to file a report, including the cost projections with the Clerk of the House of Representatives who shall forward the same to the House and Senate Committees on Ways and Means and the Joint Committee on Public Service of the General Court no later than March 19, 1997. The early intervention plans were to be implemented no later than July 1, 1997. PERAC filed the report as required.

Chapter 17 of the Acts of 1997 dealt with the early intervention plans and mandated that PERAC, in consultation with the Massachusetts Municipal Association, the Massachusetts Association of Contributory Retirement Systems, the State Board of Retirement and the Teacher's Retirement Board, was to study and evaluate the early intervention program established by G.L. c. 32, §5B. On or before October 1, 1997, PERAC is required to file the result of its study, together with any recommendations with the Clerk of the House of Representatives who shall forward the same to the House and Senate Committee on Ways and Means and the Joint Committee on Public Service. The early intervention programs shall be effective and shall be implemented on January 1, 1998.

The Commission established an Early Intervention Task Force to assist in the mandates of Chapter 17 of the Acts of 1997. The Task

Force included to those entities mandated by the law, representatives of labor organizations, and a representative of county retirement systems. Staff representing the chairpersons of the Joint Committee on Public Service attended the Task Force meetings.

The Task Force members and participants were of divergent interests and represented a wide range of constituencies. All viewpoints were presented, and even though there was not total agreement in all areas of discussion, the positions of each member and participant was given respect and consideration. Each member and participant put forth a great effort to arrive at a report for the Commission in a short time frame. It has been a pleasure to work with and be a part of this group.

Having considered and weighed relevant information presented, the Task Force made recommendations to be reported to the Public Employee Retirement Administration Commission.

The Report of the Early Intervention Task Force is attached.

EARLY INTERVENTION TASK FORCE REPORT.

The Task Force met in public session on several occasions during the summer of 1997. They fully discussed the issues and concerns of those persons and entities impacted by the early intervention programs established by G.L. C. 32, §5B. These issues and concerns included, but were not limited to, the mission of the task force, the current workers' compensation early intervention program and the efficacy of developing such a standard for all employees. The task force also sought out and reviewed, in depth, other community workers' compensation and early intervention programs, specifically, those from the City of Boston Police and Fire Departments, the Town of Needham, and that which is currently proposed for Worcester County.

Whereas, The Task Force generally agreed that the concept of early intervention is extremely important to the overall goal of making the workplace a safer environment and the workforce a healthier group. However, the opinions vary as to just how to obtain this goal as well as to just who should finance the overall rehabilitation program. It is clear however, that Federal law restricts the expenditure of trust fund (retirement portfolio funds) from paying for costs other than for those directly related to retirement. Some members of the Task Force believe that any rehabilitation program should be subject to a collective bargaining agreement while others believe it should be mandated. Additionally, discussion ensued relative to the current composition of the Early Intervention Team. It was believed that this process was cumbersome and potentially unworkable.

Whereas, A properly run early intervention program clearly reduces claims and the Commonwealth's Workers' Compensation Model was singled out as an example. The cost to the Commonwealth for industrial accident claims in 1991 was \$65 million and in 1996 it was \$41 million, a \$24 million reduction in five years. Built into this savings factor is the cost of the rehabilitation programs, amounting to a net savings of \$4.4M. A valid cost effective point is to be made which no city or town can ignore. Working to make a safer and healthier environment both physically and fiscally sound, is a goal the Task Force hopes to achieve.

Whereas, The Commission staff indicated to the task force that they were working on the definition of “essential duties”, which will now become an integral part of any individual’s ability to return to duty. This definition is currently being drafted and will be included in new regulations to be scheduled for public hearings in the Fall. Additionally, the Human Resource Department is involved in an ongoing project defining the essential duties of all state employees and has an expected completion date of twenty-four (24) months.

Whereas, There is concern as to whether or not a retirement system should in fact be concerned with the physical condition of an employee upon the time of “enrollment” into the system. It was the general consensus that the system in the long run suffers a negative financial impact if someone is employed absent a proper physical standard. The public safety officers, i.e. police and firefighters, throughout the Commonwealth clearly have many more programs in place than any other public sector workforce, and it is this, non public safety group which needs to be addressed. At least 50% of the workforce in all our cities and towns are not public safety personnel.

Whereas, The Task Force recognized that the retirement boards established pursuant to G.L. c. 32 differ greatly in geographic scope, membership demographics, numbers of active and retired members, number of governmental units and employers whose employees are members of the system and staff support available to the board. These and other complicated factors would make the implementation of the Early Intervention Program difficult for some retirement boards, particularly those with multiple employers.

Having considered and weighed relevant information presented, the Early Intervention Task Force hereby resolves and recommends to the Public Employee Retirement Administration Commission:

Be it resolved, That any early intervention programs as described in G.L. c. 32, §5B should be a function more appropriately dealt with in the employment relationship and not as a retirement function.

Further, be it resolved, That assets of the contributory retirement systems established pursuant to the provisions of G.L. c. 32 must not be used to pay any of the costs associated with an early intervention program for active employees or those employees who have not yet retired.

Further, be it resolved, That the funds of the contributory retirement systems established pursuant to the provisions of G.L. c. 32

cannot be used for non-retirement services or expenses, including distribution of retirement system funds to cover payment of active employees' salaries.

To implement the recommendations of the Early Intervention Task Force, the attached legislative recommendations are submitted.

The Report of the Early Intervention Task Force has been approved and submitted this 8th day of September, 1997.

Robert F. Stalnaker

Robert F. Stalnaker, Chair
Executive Director, PERAC

James Machado

James Machado
Massachusetts Police Association

David Baier

David Baier, Director of Legislative
Services
Massachusetts Municipal Association

Robert B. McCarthy

Robert B. McCarthy, President
Professional Fire Fighters of
Massachusetts

Michael J. Donoghue

Michael J. Donoghue, Treasurer-Chair
Worcester County Retirement Board

George F. McCray

George F. McCray, President
Massachusetts Association of
Contributory Retirement Systems

Thomas R. Lussier

Thomas R. Lussier, Executive Director
Teachers' Retirement Board

Laureen M. Vaughn

Laureen M. Vaughn, Executive Director
State Retirement Board

SUMMARY OF PROPOSED AMENDMENTS RECOMMENDED BY EARLY INTERVENTION TASK FORCE.

The proposed amendments are not in the proper form for filing but are intended to show the changes that are being made by interlining the language that is to be deleted and underlining the language that is to be inserted.

The purpose of the amendments is to retain all aspects of the early intervention programs, deleting most participation and funding by the retirement system.

G.L. c. 32, §5B(a) The proposal deletes the reference to the retirement board and substitutes reference to employers who employ persons who are members of a retirement system. If this section is to remain in G.L. c. 32, reference perhaps should remain to membership in the system. Thus all employers with employees who are members would be required to participate while those without members in a chapter 32 system (i.e. MBTA) would not come within the requirements of the section. References to “disabled” workers is changed to “injured” workers.

G.L. c. 32, §5B(b) The proposal again deletes references to the retirement board, except that a designee of the retirement board will serve on the early intervention team. The retirement boards’ designee cannot be a board member. If a team is assembled for a member who is not represented by a union, the member is allowed to choose a representative to be on the team. The employer is required to notify the retirement board whenever an early intervention team is assembled. The physicians (rather than the retirement board) will determine whether the employee is a candidate for further review. The team that is assembled is much the same as in the current legislation except the employer’s representative serves as chairman of the team. The team will select the rehabilitation specialist (rather than PERAC).

G.L. c. 32, §5B(c) The proposal again deletes all references to the retirement board, and makes it clear that the program is to coordinate with and not duplicate services or treatments available under G.L. c. 152 or G.L. c. 41.

G.L. c. 32, §5B(e) The proposal again deletes all references to the retirement board. The determination as to whether the member failed to cooperate is made by the team.

G.L. c. 32, §8(2) The proposal inserts language in the first paragraph that deals with persons who were promoted into a position that was vacated by a disability retiree. If the disability retiree is reinstated to the position within two years of retirement, the person who promoted into the position is to be placed on the top of the list to be promoted again into the position for two years. The proposal also deletes two provisions that would require the retirement board to use retirement funds to make up the difference between the compensation paid to a member reinstated to a position for which the regular compensation is less than the position from which the member had retired.

G.L. c. 32, §20(50)(d) The proposal deletes the requirement that all retirement boards designate a neutral physician to advise in all determinations of disability retirements and accidental death benefit claims. A retirement board would be allowed to designate a neutral physician to assist and advise as the board determined to be necessary.

PROPOSED AMENDMENTS RECOMMENDED BY EARLY INTERVENTION TASK FORCE.

G.L. c. 32 §5B. Early Intervention Plan; Rehabilitation Program.

(a) Every employer in the commonwealth who employs persons who are members of a retirement system ~~board~~ established pursuant to the provisions of this chapter shall establish, in consultation with appropriate officials of the governmental unit; and ~~a~~ representatives of the unions in the governmental unit, an early intervention plan ~~which shall be subject to the review and approval of the commission.~~ In the case of member's of the teacher's retirement system, the appropriate official of the governmental unit shall be a designee of municipal or regional school committees. Said plan shall be designed to implement programs and procedures that will effectuate the delivery of a coordinated employee assistance program and procedures that will effectuate the delivery of a coordinated employee assistance program for injured members; to provide educational programs designed to encourage workplace safety; and to identify hazards for the employer's attention. The goal of the plan shall be to limit the retirement system's liability for disability benefits by ensuring the continued employment of injured disabled members through medical and vocational rehabilitation, reasonable accommodation of injured disabled workers, and a safer workplace.

(b) ~~In order to facilitate the implementation of t~~ The system's early intervention plan shall be implemented, every employer, following ~~written notice to the affected member shall notify the retirement board~~ whenever a member has been absent from work for thirty work days or more as the result of a work-related injury, if it is determined by a physician selected by the employee and a physician selected by the employer that the employee's return to work is not imminent; provided, that if the two physicians do not agree whether the return to work is imminent, said physicians shall select a third physician who shall make said determination. The physicians shall also determine. ~~Upon receipt of said notification, the retirement board shall determine whether the member is a candidate for further review pursuant to the employer's system's early intervention plan. If the board determines that further review is warranted, the employer it shall proceed to assemble an early intervention team which shall consist of a designee representative of the retirement board who shall not be a member of the retirement board who shall serve as chair of the team, the employer's personnel or human service director or workers compensation agent who shall serve as chair of the team, a rehabilitation specialist designated by the commission, a representative of the members union or if the member is not represented by a union, a representative of the member's choosing, and the members treating physician and a rehabilitation specialist designated by the team. The employer shall notify the retirement board whenever an early intervention team is assembled.~~ Said team shall have access to records pertaining to the member's injury to determine the condition of the member. Any records obtained by the team shall be used for the sole purpose of making the determination required by this section and shall not be used for any other purpose relating to the member's employment. Such records shall be exempt from disclosure pursuant to clause Twenty-sixth of section seven of chapter four and chapter sixty-six. No member of the team shall disclose to any person who is not a member of the team any confidential medical information or other personal information about the member that has been supplied to the team under the provisions of this section. If the ~~employee board,~~ upon recommendation of the early intervention team, determines that the member is likely to be unable to perform the essential duties of his job, it shall have the authority to require the member to undergo an assessment to determine whether he would benefit from a medical or vocational rehabili-

tation program. The determination by ~~an employer or retirement board~~ as to whether a member is a candidate for further review pursuant to the early intervention plan, the scope of the review by the early intervention team, and the extent of any recommended vocational or rehabilitation program shall be limited to the member's injury which caused the appointment of the early intervention team ~~original notification to the retirement board. The board shall make a~~ Every reasonable effort shall be made to make such determination in an expeditious manner and said determination shall not be arbitrary, capricious or unreasonable. If the member fails to participate in the assessment or required rehabilitation, he shall be deemed to have waived his rights to benefits pursuant to section six or seven.

(c) For purposes of designing the rehabilitation program, the early intervention team shall utilize resources available from ~~the local retirement board~~, the employer, the member's collective bargaining representative, the Massachusetts rehabilitation commission, the public employee retirement administration commission, and such other sources as it deems necessary. The early intervention plan shall be reasonable and shall not unduly burden the member with regard to travel and time requirements. ~~The plan shall be submitted to the board for approval; provided, however, that the member shall first be given notice and an opportunity to be heard by the board. The plan shall coordinate with and not duplicate services or treatments available to the employee under chapter one hundred and fifty-two or section one hundred of chapter forty-one.~~

(d) The early intervention team shall monitor the implementation of the rehabilitation plan and shall continue to monitor the member's progress until he is returned to work or is granted a disability retirement pursuant to section six or seven.

(e) The employer board ~~board~~ shall assume responsibility for all costs associated with the assessment and subsequent rehabilitation plan, less any amounts payable under insurance available to the employer or to the member. If the early intervention team board ~~board~~ determines that the member has failed without good cause to complete the rehabilitation plan designed by the early intervention team, the member shall be deemed to have waived his rights to benefits pursuant to section seven in connection with the injury for which the rehabilitation was designed.

(f) If, following completion of a rehabilitation plan, the early intervention team determines that the member is able to perform the essential duties of the position in which the member was employed prior to his absence from work, the member shall be returned to work in his former position; provided that nothing in this section shall interfere with said member's right to use sick leave or take other leaves of absence subject to the same terms and conditions applicable to employees who have not been subject to the requirements of this section; and provided, further, that no information obtained by the board or the member's employer as a result of the early intervention process shall be admissible in support of any application for involuntary retirement pursuant to section six or seven.

G.L. c. 32 §8. Reexamination of Members Retired for Disability; Restoration to Active Service; Modification of Retirement Allowance.

(1) Evaluations and Reexamination of Members: —

(a) *No proposed changes to (1)(a)*

(b) *No proposed changes to (1)(b)*

(2) Restoration to service in same governmental unit; (a) If, within two years of the date that a member is retired under section six or seven, a regional medical panel determines that the retired member is able to perform the essential duties of the position from which he retired of, if following the completion of a rehabilitation program required under subdivision (1), a regional medical panel so finds, the member shall be returned to such position and his disability retirement shall be revoked; provided, however, that if the retired member is able to perform the essential duties of a similar job within the same department for which he is qualified, as determined by the department of personnel administration, and such position is vacant, said member shall return to such position; provided further, however, that if such position is not vacant, then the last person appointed to that rank or position will be reduced in rank or position and shall be placed at the top of the list to fill such rank or position for a two year period. If the similar position shall pay less than the position from which such member shall have retired, such member shall be granted an amount from the retirement system equal to the difference between the regular compensation of the position for which such member was restored and the regular compensation such member would have received had he been restored to the position from which he retired.

If, after two years of the date that a member is retired under section six or seven, the regional medical panel determines that the retired member is qualified for and able to perform the essential duties of the position from which he retired or a similar position within the same department, as determined by the personnel administrator, said member shall be returned to said position, provided the position is vacant. If the position has been filled, the member shall be granted a preference for the next available position or similar position for which he is so qualified. ~~If the similar position shall pay less than the position from which such member shall have retired from, such member shall be granted an amount from the retirement system equal to the difference between the regular compensation of the position for which such member was restored and the regular compensation such member would have received had he been restored to the position from which he retired.~~

When under the provisions of this section, no vacancy exists in the same or similar position he shall continue to receive such retirement allowance until such reinstatement takes place or as a result of the submission of earnings information under section ninety-one A which may require his pension to be reduced or revoked.

(b) *No proposed changes to (2)(b).*

(c) *No proposed changes to (2)(c).*

(d) *No proposed changes to (2)(d).*

3) Modifications of retirement allowance

(3) *No proposed changes to (3)*

G.L. c. 32, §20 (5) General Powers and Duties of Boards.

(d) Any such board ~~may shall~~ designate a neutral medical doctor or doctors with training or experience in the particular field of medicine applicable to the disability to advise the board in the determination of applications for ordinary disability retirement, accidental disability retirement, or in the case of an application for accidental death benefit.

